BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

MARTHA F. LEE)
Claimant)
VS.)
) Docket No. 217, 386
STATE OF KANSAS)
Respondent)
AND)
)
STATE SELF INSURANCE FUND)
Insurance Carrier)

ORDER

Respondent requested review of the preliminary hearing Order dated January 7, 1997, entered by Administrative Law Judge Steven J. Howard.

Issues

The Administrative Law Judge granted claimant's request for temporary total disability and medical benefits. Respondent contends claimant's accident occurred outside the scope of her employment. The only issue now before the Appeals Board on this review is whether claimant's accident arose out of and in the course of her employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for preliminary hearing purposes the Appeals Board finds as follows:

The preliminary hearing Order should be affirmed.

- (1) Whether an accidental injury arises out of and in the course of employment is a jurisdictional issue and may be reviewed under K.S.A. 1996 Supp. 44-534a.
- (2) Claimant worked for the State of Kansas as a home-care worker. On August 22, 1996, claimant injured her back while assisting an SRS client from the toilet to a wheelchair. Respondent contends the accident occurred while claimant was "performing services outside the scope of her employment" because claimant was allegedly assigned to perform light housekeeping chores only. Conversely, claimant testified her previous supervisor directed her to assist the client in and out of the wheelchair to use the toilet. Respondent presented two witnesses, a social worker and claimant's present supervisor, who testified that assisting the client into her wheelchair was outside claimant's assigned duties.

The Administrative Law Judge found claimant's accident compensable and the Appeals Board agrees. The Appeals Board finds claimant's testimony persuasive and concludes the act of assisting the client into the wheelchair on the date of accident was incidental to claimant's assigned duties. Therefore, claimant's August 22, 1996, work-related accident arose out of and in the course of her employment with the respondent.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated January 7, 1997, entered by Administrative Law Judge Steven J. Howard should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this day of March 1997

BOARD MEMBER

c: William L. Phalen, Pittsburg, KS
Carlton W. Kennard, Pittsburg, KS
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director